

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1653 of 2000

to

FIRST APPEAL No 1663 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RATUJI BAJUJI

Appearance:

MR RC KODEKAR, AGP for Petitioners

MR NITIN M AMIN for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 13/09/2000

ORAL (COMMON) JUDGEMENT

(Per: J.M. Panchal, J.)

Admitted. Mr. Nitin M. Amin, learned counsel waives service of notice on behalf of the claimants in each Appeal. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, all the Appeals are taken up for final hearing today.

2. All these Appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated January 25, 2000 rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur in Land Acquisition Case No.1928 of 1996 and Land Acquisition Case Nos.1935 of 1996 to 1944 of 1996 by which it is held that the claimants are entitled to compensation for the lands acquired at the rate of Rs.10.12 per sq.m. It may be stated that the Land Acquisition Officer had made common awards dated August 30, 1993 and November 26, 1993 determining compensation payable to the claimants under Section 11 of the Land Acquisition Act. Moreover, all the Land Acquisition Cases were consolidated by the Reference Court and common evidence was led by the parties in Land Acquisition Case No.1935 of 1996. As common questions of fact and law arise for determination in these group of Appeals, we propose to dispose them of by this common judgment.

3. The Executive Engineer, Narmada Project, Kadi had proposed to the State Government to acquire agricultural lands of Village Nani Kumad, Taluka Viramgam, District Ahmedabad for the public purpose of construction of Narmada Project Saurashtra Branch Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Nani Kumad were likely to be needed for the said public purpose. Therefore, Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Official Gazette on August 1, 1991. Thereafter, those persons whose lands were sought to be acquired were served with notice under Section 4 of the Act and they had also filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad had forwarded his report to

the State Government, as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Nani Kumad, which were specified in the Notification published under Section 4(1) of the Act were needed for public purpose of construction of Narmada Project Saurastra Branch Canal. Therefore, declaration under Section 6 of the Act was made which was also published in the Official Gazette on December 5, 1991. The interested persons were thereafter served with notice under Section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.25/- per sq.m. However, having regard to the materials placed before him, the Land Acquisition Officer by his two awards dated August 30, 1993 and November 26, 1993 offered compensation to the claimants at the rate of Rs.1.12 per sq.m. The claimants were of the opinion that the compensation offered by the Special Land Acquisition Officer was inadequate and therefore, they accepted the amount of compensation under protest. They filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur which were registered as Land Acquisition Case No.1928 of 1996 and Land Acquisition Case Nos.1935 of 1996 to 1944 of 1996.

4. In the Reference Applications, it was pleaded by the claimants that village Nani Kumad had all the facilities such as light, water, telephone, road etc. and therefore, the claimants should have been awarded compensation at the rate of Rs.25/- per sq.m. for the acquired lands. The Reference Applications were resisted by the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad vide written statement Exh.9 wherein it was inter alia pleaded that as just compensation was awarded by the Land Acquisition Officer, the Reference Applications should be dismissed. The Executive Engineer, Narmada Project, Kadi, District Mehsana had also filed written statement at Exh.10 and taken up the contentions which were raised in the written statement filed by the Special Land Acquisition Officer at Exh.9. Upon rival assertions of the parties, necessary issues for determination were framed by the Reference Court at Exh.11. On behalf of the claimants, Mr. Khodabhai Gangarambhai Thakore who was claimant in Land Acquisition Case Nos.1938 and 1939 of 1996 was examined at Exh.15. He deposed before the court that village Nani Kumad had

all the facilities such as road, light, water, primary schools, cooperative societies, buses etc. and their lands acquired were irrigated lands. The witness claimed before the court that all the claimants were taking two crops in a year and in order to substantiate his claim, he produced extract of village Form No.7/12 at Exh.16. The witness asserted that the claimants were also entitled to compensation for the well situated in the acquired lands. The witness produced previous award of Reference Court rendered in Land Acquisition Reference Nos.1851 of 1996 to 1933 of 1996 and Land Acquisition Case No.2023 of 1996 on March 16, 1999 at Exh.17 relating to the lands of this very village and claimed that as the lands which were subject matter of the previous award were similar in all respects to the lands acquired in the present case, the claimants were entitled to compensation on the basis of the said award. The witness further deposed before the court that the claimants were taking crops of Wheat, Jeeru, Cotton, vegetables etc. and were earning Rs.9,000/- per year as net profit. In cross-examination by the learned counsel for the present appellants, the witness denied the suggestion made to him to the effect that the fertility of the lands of the village was not similar. The witness admitted that he had no documentary evidence to establish his claim that the claimants were earning Rs.9000/- per year as net profit by way of sale of agricultural produces.

5. The Reference Court noticed well-settled principles regarding assessment of compensation in Land Acquisition Cases and after appreciating the evidence on record held that as the award produced by the claimants at Exh. 17 related to the lands of the same village and as lands were acquired in both the cases by the same Notification, the same was relevant as well as comparable for the purpose of assessing compensation of the lands in this case. Placing reliance on the said previous award, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.10.12 per sq.m. by the impugned common award giving rise to the present Appeals.

6. Mr. R.C. Kodekar, learned counsel for the appellants submitted that the previous award of the court produced at Exh.17 was neither relevant nor comparable and therefore, could not have been made basis for the purpose of awarding compensation to the claimants in the present case. According to the learned counsel, no cogent and reliable evidence was led by the claimants to

establish that the lands with reference to which previous award was rendered were similar in all respects to the lands acquired in the present case and therefore, the claimants should not have been awarded compensation at the rate indicated in the previous award. What was emphasised was that in the absence of reliable evidence, the Reference Court should not have enhanced the compensation and therefore the appeals should be allowed.

7. Mr. Nitin M. Amin, learned counsel for the claimants submitted that the previous award of the court produced at Exh.17 related to lands of this very village and as the lands were acquired by common Notification which was published under Section 4(1) of the Act on December 5, 1991, the Reference Court was justified in placing reliance on the said previous award for the purpose of awarding compensation to the claimants. According to the learned counsel for the claimants, the assertion made by witness Kodhabhai Gangarambhai Thakore to the effect that the lands which were subject matter of previous award were similar in all respects to the lands under consideration was never disputed by the appellants and therefore, just determination of compensation made by the Reference Court should be upheld by this court.

8. We have heard the learned counsel for the parties and taken into consideration the paper-book containing oral as well as documentary evidence which is supplied by the learned counsel for the respondents. In these cases, the claimants have not based their claim for enhanced compensation on sale instances nor have they claimed compensation on yield basis. The claimants have relied upon previous award of Reference Court relating to agricultural lands of this very village rendered in Land Acquisition Case Nos.1851 of 1996 to 1933 of 1996 and Land Acquisition Case No.2023 of 1996 rendered on March 16, 1999 by the learned Special Judge (LAR) and 3rd Extra Assistant Judge, Ahmedabad (Rural), Mirzapur. The assertion made by the witness examined on behalf of the claimants that the lands acquired were irrigated lands and that the claimants were taking two crops in a year is well founded in view of the extracts of village Form No.7/12 produced on the record of the case relating to the acquired lands. It is well-settled that the award rendered by the Reference Court in respect of similar lands and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by court in the previous case of land acquisition.

They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in the vicinity in previous land acquisition proceedings can be treated as affording a good guide for determination of compensation to be awarded for lands acquired subsequently by the same Notification. In assessing the market value of a piece of land, the price paid in other transactions relating to land must be of some value. What its value is should be determined after considering all the evidence on which the previous award is founded. The awards given by the Reference Court are at least relevant material and may be in the nature of admission with regard to the value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the lands value of which is to be assessed later on, the rates found in the said previous awards can be treated as relevant material to afford a basis to work upon for determination of compensation on a later date. Previous award therefore produced at Exh.17 is a relevant piece of evidence and can be made basis for determination of compensation payable to the claimants in the present case if found comparable.

9. Exh.17 indicates that agricultural lands situated in the sim of Village Melaj, Taluka Viramgam, Dist. Ahmedabad were acquired for the purpose of construction of Branch Canal of Narmada Project Canal of Sardar Sarovar Narmada Corporation Ltd. pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on August 1, 1991. In the present case also, Notification under Section 4(1) of the Act was published in the Official Gazette on August 1, 1991. Therefore, there is no manner of doubt that by the same Notification, the agricultural lands of village Nani Kumad as well as agricultural lands situated in the sim of village Melaj were acquired for the same public purpose. Exh.17 further indicates that the Special Land Acquisition Officer, Narmada Project, Unit No.2, Ahmedabad had offered compensation to the claimants at the rate of Rs.1.12 per sq.m. by his awards dated August 30, 1993 and November 26, 1993 which were rendered in Land Acquisition Case No.54 of 1991 and Land Acquisition Case No.55 of 1991 respectively. Feeling aggrieved by the offer of compensation made by the Special Land Acquisition Officer, the claimants had sought references and the Reference Court by judgment dated March 16, 1999 has held that the claimants are entitled to compensation at the rate of Rs.10.12 per sq.m. The previous judgment also shows that while assessing the market value of

agricultural lands situated in the sim of Village Melaj, another previous award of the Reference Court rendered in Land Acquisition Case No.1177 of 1987 which was produced at Exh.17 on the record of the said case relating to the agricultural lands of village Sokli was relied upon. It is relevant to notice that the assertion made by witness Kodhabhai Gangarambhai Thakore to the effect that the fertility of the lands which were subject matter of Exh.17 were similar in all respects to their agricultural lands was never effectively controverted. As observed by the Supreme Court in State of Madras vs. A.M. Nanjal and another [AIR 1976 Supreme Court 651], if the lands involved in the awards are comparable lands and in the reasonable proximity of the acquired lands, rates found in the previous awards should be treated as reasonable material to offer a basis to work upon for determination of the compensation at a later date. Therefore, in our view no error was committed by the Reference Court in placing reliance on the previous award produced at Exh.17 for the purpose of determining compensation payable to the claimants in the present case. The communication dated September 18, 1999 addressed by Mr. R.G. Bateriwala, Under Secretary to Government to the District Government Pleader, Ahmedabad (Rural), Ahmedabad which is on the record of the case at Exh.21 shows that the Government has acquiesced in the judgment and award passed by the learned Special Judge (LAR) and 3rd Extra Assistant Judge, Ahmedabad (Rural), Mirzapur in Land Acquisition Case Nos.1851 of 1996 to 1933 of 1996 and Land Acquisition Case No.2023 of 1996. Thus, the previous judgment of the court produced at Exh.17 has become final between the parties. It is relevant to notice that no documentary or oral evidence was led by the appellants to establish that previous award relied upon at Exh.17 was neither relevant nor comparable for the purpose of assessing market value of the lands belonging to the claimants. Having regard to the totality of facts and circumstances of the case, we are satisfied that a just award has been made by the Reference Court determining compensation payable to the claimants and therefore the Appeals cannot be accepted. For the foregoing reasons, all the Appeals fail and are dismissed with no orders as to cost.

(J.M. Panchal, J.)

(M.C. Patel, J.)

hki